

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TODD BRINKMEYER

Petitioner,

v.

WASHINGTON STATE LIQUOR AND  
CANNABIS BOARD,

Respondent.

Case No. 3:20-cv-05661-BHS

**ORDER GRANTING PETITIONER'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING RESPONDENT'S MOTION  
FOR SUMMARY JUDGMENT**

**[PROPOSED]**

THIS MATTER came before the Court on the Petitioner's Motion for Summary Judgment (the "Petitioner's Motion") and the Respondent's Motion for Summary Judgment (the "Respondent's Motion"). The Court has reviewed the records and filings herein, including the following documents submitted by the parties:

1. The Petitioner's Motion;
2. The Declaration of Todd Brinkmeyer in Support of Petitioner's Motion for Summary Judgment;
3. The Declaration of Scott Atkison in Support of Petitioner's Motion for Summary Judgment;
4. The Declaration of Chris Masse in Support of Petitioner's Motion for Summary Judgment and the exhibit attached thereto;

1           5.       The Declaration of Andy Murphy in Support of Petitioner’s Motion for Summary  
2 Judgment and the exhibits attached thereto;

3           6.       The Respondent’s Response to the Petitioner’s Motion;

4           7.       The Petitioner’s Reply in Support of the Petitioner’s Motion;

5           8.       The Respondent’s Motion;

6           9.       The Declaration of Rebecca Smith in Support of the Respondent’s Motion;

7           10.      The Petitioner’s Response to the Respondent’s Motion; and

8           11.      The Respondent’s Reply in Support of the Respondent’s Motion

9 Having considered the pleadings of record, the arguments of counsel, and being fully advised on  
10 the matter, the Court hereby FINDS that:

11           1.       The “Residency Requirements” in RCW 69.50.331(1)(b)(ii)-(iv)<sup>1</sup>, WAC 314-55-  
12 020(11)<sup>2</sup>, and WAC 314-55-035(1) expressly discriminate against nonresidents of Washington,  
13 which includes Brinkmeyer as an Idaho resident, by imposing a durational residency requirement  
14 as a condition of becoming or continuing as a licensee or true party of interest (“TPI”) to a  
15 licensed marijuana business. Therefore, Brinkmeyer has carried his burden of proving the  
16 Residency Requirements are facially invalid because there is no set of circumstances where the  
17 laws as currently written can be constitutionally applied.

18           2.       Atkison wants to transfer his ownership interest and oversight responsibilities in  
19 the Stores to Brinkmeyer, which requires approval from Respondent the Washington State  
20 Liquor and Cannabis Board (the “LCB” or “State”). The LCB confirmed it will not approve  
21 Brinkmeyer’s application to become a license-holder because he is not a resident of Washington.  
22 Brinkmeyer is willing and able to assume Atkison’s equity interest, in part so he can honor his  
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24           <sup>1</sup> Petitioner does not challenge the constitutionality of RCW 69.50.331(1)(b)(i), which limits license ownership to  
25 persons older than 21.

26           <sup>2</sup> The Petition originally referenced WAC 314-55-020(10), but the Washington State Liquor and Cannabis Board has  
since amended the regulation. The challenged regulation now appears at WAC 314-55-020(11).

1 friend by continuing the business and also to give Atkison and the other owners of the Stores  
 2 peace of mind that the Stores will be well-capitalized and in strong, experienced hands, which  
 3 Brinkmeyer can provide. The only Washington marijuana businesses Brinkmeyer is interested in  
 4 obtaining an interest in are Atkison's Stores. The Stores are unique to Brinkmeyer.

5 3. The Residency Requirements are not needed for Respondent the Washington  
 6 State Liquor and Cannabis Board (the “LCB” or “State”) to maintain oversight over licensed  
 7 marijuana businesses and their owners. The State can thoroughly vet licensee applicants without  
 8 requiring residency, the State can adequately monitor business operations because the marijuana  
 9 businesses licensed by the State are located in Washington, and the State's ability to revoke  
 10 licenses provides strong incentives to comply with state law.

11 4. The Residency Requirements violate the dormant Commerce Clause by expressly  
 12 discriminating against nonresidents and limiting commercial opportunities to long-term  
 13 Washington residents. The State can accomplish any and all legitimate local interests with  
 14 nondiscriminatory alternatives through either its existing enforcement authority and enforcement  
 15 scheme or by implementing other nondiscriminatory alternatives.

16 5. The federal illegality of cannabis under the Controlled Substances Act (“CSA”)  
 17 does not allow the State to enact laws that give preference to in-state economic interests.  
 18 Although the CSA criminalizes marijuana, it does not affirmatively grant states the power to  
 19 burden interstate commerce in a manner which would otherwise not be permissible.

20 6. The Residency Requirements violate Brinkmeyer's right to pursue a livelihood  
 21 and right to travel, which are fundamental rights protected by the Privileges and Immunities  
 22 Clause in Article IV of the United States Constitution. The State has not presented a substantial  
 23 reason that justifies the discrimination against nonresidents in the Residency Requirements. The  
 24 interests the State has identified to purportedly justify the Residency Requirements are not  
 25 substantially related to a legitimate state objective because either the State's existing enforcement  
 26

1 authority and enforcement scheme or the State's other possible nondiscriminatory alternatives  
 2 provide less restrictive means to accomplish legitimate state objectives.

3 7. The Residency Requirements violate Brinkmeyer's rights under the Fourteenth  
 4 Amendment's Equal Protection and Privileges or Immunities Clauses, both of which protect the  
 5 fundamental right to travel. The Residency Requirements are therefore subject to and fail strict  
 6 scrutiny review. The State has not identified a compelling government interest served by the  
 7 Residency Requirements. Further, the Residency Requirements are not narrowly tailored to serve  
 8 a government interest because the State's oversight powers provide less restrictive means to  
 9 accomplish government interests.

10 8. The Residency Requirements violate Brinkmeyer's Fourteenth Amendment due  
 11 process right to pursue a profession, which is subject to rational basis review. The Residency  
 12 Requirements are not rationally related to a legitimate government interest because the  
 13 Residency Requirements are unnecessary for the State to evaluate whether applicants meet  
 14 requisite criteria to receive a license or become a TPI.

15 Now, therefore, the Court hereby ORDERS that:

- 16 1. The Petitioner's Motion is GRANTED;
- 17 2. The Respondent's Motion is DENIED; and
- 18 3. The State, as well as its officers, agents, servants, employees, attorneys, and such  
 19 persons in active concert or participation therewith having notice of this Order, are hereby  
 20 restrained and enjoined from enforcing, applying, or relying upon the Residency Requirements in  
 21 any way or for any purpose.

22 ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

23  
 24 \_\_\_\_\_  
 25 HONORABLE BENJAMIN H. SETTLE  
 26 UNITED STATES DISTRICT COURT JUDGE

1 Presented by:

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